



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9718]

RIN 1545-BH37

Period of Limitations on Assessment for Listed Transactions Not Disclosed Under Section 6011

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the exception to the general three-year period of limitations on assessment under section 6501(c)(10) of the Internal Revenue Code (Code) for listed transactions that a taxpayer failed to disclose as required under section 6011. These final regulations affect taxpayers who fail to disclose listed transactions in accordance with section 6011.

DATES: Effective date: These regulations are effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: For dates of applicability, see § 301.6501(c)-1(g)(9).

FOR FURTHER INFORMATION CONTACT: Danielle Pierce of the Office of Chief Counsel (Procedure and Administration), at (202) 317-6845 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1940. The collection of information in these final regulations is in §301.6501(c)-1(g)(5). This information is required to provide the IRS, under penalties of perjury, with the information necessary to properly determine the taxpayer’s applicable period of limitations. The collection of information in these final regulations is the same as the collection of information in Revenue Procedure 2005-26 (2005-1 CB 965), which was previously reviewed and approved by the Office of Management and Budget under control number 1545–1940. The collection of information in §301.6501(c)-1(g)(6) is the same as the collection of information required under section 6112. See §601.601(d)(2)(ii)(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. §6103.

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR Part 301) under section 6501(c) relating to exceptions to the period of limitations on assessment. Section 6501(a) provides that, except as otherwise

provided, if a return is filed, tax with respect to that return must be assessed within 3 years from the later of the date the return was filed or the original due date of the return. Section 6501(c) contains several exceptions to the general three-year period of limitations on assessment.

Section 6501(c)(10) was added to the Code by section 814 of the American Jobs Creation Act of 2004, Public Law 108-357 (118 Stat. 1418, 1581 (2004)) (AJCA), enacted on October 22, 2004. Section 6501(c)(10) provides that, if a taxpayer fails to disclose a listed transaction as required under section 6011, the time to assess tax against the taxpayer with respect to that transaction will end no earlier than one year after the earlier of (A) the date on which the taxpayer furnishes the information required under section 6011, or (B) the date that the material advisor furnishes to the Secretary, upon written request, the information required under section 6112 with respect to the taxpayer related to the listed transaction. Section 6112 requires material advisors to maintain lists of advisees and other information with respect to reportable transactions, including listed transactions, and to furnish that information to the IRS upon request. The term “material advisor” is defined in §301.6111-3(b). Section 6112 and §301.6112-1 provide guidance relating to the preparation, content, maintenance, retention, and furnishing of lists by material advisors. Under this provision, if neither the taxpayer nor a material advisor furnishes the requisite information, the period of limitations on assessment will remain open, and the tax with respect to the listed transaction may be assessed at any time. Section 6501(c)(10) is effective for taxable years with respect to which the period of limitations on assessment did not expire prior to October 22, 2004.

Section 6501(c)(10) applies when a taxpayer does not properly disclose a listed transaction (as defined in section 6707A(c)(2)) as required under section 6011.

Taxpayers are required under section 6011 and the regulations thereunder (collectively referred to as the “section 6011 disclosure rules”) to disclose certain information regarding each reportable transaction in which the taxpayer participated. See Treas. Reg. §§1.6011-4; 20.6011-4; 25.6011-4; 31.6011-4; 53.6011-4; 54.6011-4; and 56.6011-4. Among the transactions that are reportable are “listed transactions.” See Treas. Reg. §1.6011-4(b)(2). Under the section 6011 disclosure rules, a listed transaction is a transaction that is the same as, or substantially similar to, a transaction that the IRS has determined to be a tax avoidance transaction and identified by notice, regulation, or other form of published guidance. Treas. Reg. §1.6011-4(b)(2). For a list of transactions the IRS has identified as listed transactions, see Notice 2009-59, 2009-31 IRB 1. See §601.601(d)(2).

If the section 6011 disclosure rules require a taxpayer to disclose a listed transaction, the taxpayer must complete and file a disclosure statement in accordance with the section 6011 disclosure rules. The section 6011 disclosure rules currently require that Form 8886, “Reportable Transaction Disclosure Statement” (or successor form), be used as the disclosure statement and be completed in accordance with the instructions to the form. The Form 8886 (or successor form) generally must be attached to the taxpayer’s original or amended tax return for each taxable year for which a taxpayer participates in a listed transaction. Treas. Reg. §1.6011-4(e)(1). If a listed transaction results in a loss that is carried back to a prior year, Form 8886 (or successor form) must be attached to the taxpayer’s application for tentative refund or amended tax

return for that prior year. The taxpayer also must send a copy of Form 8886 (or successor form) to the IRS Office of Tax Shelter Analysis (OTSA), generally at the same time that a disclosure statement pertaining to a particular listed transaction is first filed. Under the current rules, when a transaction is identified as a listed transaction after the date on which the taxpayer files a tax return (including an amended return) for a taxable year reflecting the taxpayer's participation in the listed transaction and before the end of the period of limitations for assessment of tax for any taxable year in which the taxpayer participated in the listed transaction, then the taxpayer must file Form 8886 (or successor form) with OTSA within 90 calendar days after the date the transaction became a listed transaction.

If a taxpayer does not disclose its participation in a listed transaction in accordance with all of the requirements of the section 6011 disclosure rules and section 6501(c)(10) applies, then the time to assess tax related to the listed transaction will expire no earlier than the earlier of (1) one year after the date on which the information described in section 6501(c)(10)(A) is provided, or (2) one year after the date on which the information described in section 6501(c)(10)(B) is provided.

The IRS and Treasury Department issued Rev. Proc. 2005-26 (2005-1 CB 965) on April 25, 2005, to provide interim guidance on section 6501(c)(10). The revenue procedure prescribes how taxpayers and material advisors should disclose listed transactions that were not properly disclosed under section 6011 in order to start the one-year period under section 6501(c)(10).

On October 7, 2009, a notice of proposed rulemaking (REG-160871-04) relating to the section 6501(c)(10) exception to the general three-year period of limitations on

assessment that applies if a taxpayer fails to disclose a listed transaction as required under section 6011 was published in the **Federal Register** (74 FR 51527). The preamble of the notice of proposed rulemaking provided that taxpayers may continue to rely on the rules in Rev. Proc. 2005-26 until temporary or final regulations are issued under section 6501(c)(10). No comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. The proposed regulations are adopted as revised by this Treasury decision.

Explanation of Revisions

These final regulations adopt the proposed regulations with four substantive clarifications. First, §301.6501(c)-1(g)(1) is clarified with respect to the interaction of the one-year period of limitations on assessment after disclosure of a listed transaction under section 6501(c)(10) and the general three-year period of limitations on assessment under section 6501(a) (or other applicable limitations period under section 6501). The one-year period in section 6501(c)(10) serves only to extend the existing limitations period. For example, if the general section 6501(a) three-year period of limitations on assessment applies and the one-year period under section 6501(c)(10) ends prior to the expiration of the section 6501(a) three-year period, the assessment period for the tax year remains open until the expiration of the general three-year period. Proposed section 301.6501(c)-1(g)(8), Example 5 (renumbered as Example 6 in the final regulations) and Example 9, illustrated this point. However, the text of the proposed regulations did not specifically provide that in no case will the period of limitations be shorter than the period of limitations that would apply without regard to

application of section 301.6501(c)-1(g). A sentence was added to the end of §301.6501(c)-1(g)(1) to clarify this point.

Second, the final regulations revise §301.6501(c)-1(g)(6) to clarify when a disclosure will be considered a disclosure by a material advisor for purposes of section 6501(c)(10)(B) so that the one-year period of limitations on assessment will begin. Under section 6501(c)(10)(B), if a taxpayer fails to disclose information related to a listed transaction, the time to assess tax will end no earlier than one year after the date that “a material advisor meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.” This means that unless a material advisor furnishes the information with respect to the taxpayer in response to an IRS written request for the list under section 6112(b) and in accordance with section 6112, the one-year period under section 6501(c)(10)(B) will not begin. Accordingly, receipt of information from a person other than the material advisor with respect to the taxpayer will not satisfy the requirements of a disclosure for purposes of section 6501(c)(10)(B). The final regulations add §301.6501(c)-1(g)(6)(ii)(A) to clarify that, consistent with the statutory language, except in limited circumstances related to dissolution or liquidation of an entity that is a material advisor or in the case of a designation agreement, only receipt of information furnished by the material advisor will satisfy the requirements for disclosure under §301.6501(c)-1(g)(6).

Third, the final regulations clarify that information received by the IRS in circumstances other than in response to a section 6112 request, such as in response to

an Information Document Request in a section 6700 investigation or as a result of a summons enforcement proceeding, will not begin the one-year period under §301.6501(c)-1(g)(6). Proposed section 301.6501(c)-1(g)(8), Example 10, illustrated this point. However, the text of the proposed regulations did not specifically address this point. The final regulations have been revised to add §301.6501(c)-1(g)(6)(ii)(B) to provide that information not furnished in response to a section 6112 request will not satisfy the requirements under §301.6501(c)-1(g)(6) even if provided by the material advisor, unless furnished to OTSA in accordance with §301.6112-1(d) in the case of material advisors that are liquidated or dissolved.

Fourth, the final regulations clarify that if a material advisor furnishes information described in §301.6112-1(e), but does not furnish information identifying the taxpayer as a person who entered into the listed transaction, the requirements of section 6501(c)(10)(B) will not have been satisfied for that taxpayer. Proposed section 301.6501(c)-1(g)(8), Example 11, illustrated this point. However, the text of the proposed regulations did not specifically address this point. The final regulations have been revised to add §301.6501(c)-1(g)(6)(ii)(C) for clarification.

In addition to the revisions described above, other minor clarifying changes have been made that are not intended to be substantive.

These final regulations apply to taxable years for which the period of limitation on assessment under section 6501, including the period of limitation set forth in section 6501(c)(10) and §301.6510(c)-1(g), did not expire before **INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER**, the date these final regulations are published in the **Federal Register**.

Effect on Other Documents

Upon the publication of these final regulations under section 6501(c)(10) in the **Federal Register**, Rev. Proc. 2005-26 (2005-1 CB 965), is superseded for taxable years with respect to which the period of limitations on assessment under section 6501 (including section 6501(c)(10)) did not expire before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Rev. Proc. 2005-26 (2005-1 CB 965) will continue to apply to taxable years with respect to which the period of limitations on assessment expired on or after April 8, 2005, and before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, although as provided in the proposed regulations, taxpayers could rely on the rules in the notice of proposed rulemaking (REG-160871-04) under section 6501(c)(10) published in the **Federal Register** (74 FR 51527) on October 7, 2009, until these final rules are published in this Treasury decision.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13653. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information contained in these regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6). Section 6501(c)(10) applies when taxpayers fail to comply with the reporting requirements set forth under section 6011

with respect to listed transactions. The Treasury Department and the IRS do not know the exact number and types of taxpayers that fail to comply with those requirements. However, although the Treasury Department and the IRS are aware that many tax avoidance transactions involve pass-through entities, when pass-through entities are utilized, the entities are not ultimately liable for the tax; rather, the taxpayers subject to section 6501(c)(10) will be the individuals and corporations owning, directly or indirectly, the interests in the pass-through entities. Therefore, the Treasury Department and the IRS have determined that these final regulations will not affect a substantial number of small entities.

In addition, the Treasury Department and the IRS have determined that any impact on small entities resulting from these final regulations will not be significant. Most of the information required under these final regulations is already required by other regulations or forms, namely, §1.6011-4, §301.6112-1, and Form 8886, “Reportable Transaction Disclosure Statement.” The only new information required to be submitted to the IRS is a cover letter, which must contain a reference to the tax returns and taxable year(s) at issue and a statement signed under penalty of perjury. The cover letter should take minimal time and expense to prepare. Therefore, the additional requirement of the cover letter should not significantly increase the burden on taxpayers. Based on these facts, the Treasury Department and the IRS have determined that these final regulations will not have a significant economic impact on a substantial number of small entities. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was

submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Danielle Pierce of the Office of the Associate Chief Counsel (Procedure and Administration).

List of Subjects in 26 CFR part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Part 301 is amended as follows:

PART 301 - - PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6501(c)-1 is amended by adding paragraph (g) to read as follows:

§301.6501(c)-1 Exceptions to general period of limitations on assessment and collection.

* * * * *

(g) Listed transactions--(1) In general. If a taxpayer is required to disclose a listed transaction under section 6011 and the regulations thereunder and does not do so in the time and manner required, then the time to assess any tax attributable to that listed transaction for the taxable year(s) to which the failure to disclose relates (as

defined in paragraph (g)(3)(iii) of this section) will not expire before the earlier of one year after the date on which the taxpayer makes the disclosure described in paragraph (g)(5) of this section or one year after the date on which a material advisor makes a disclosure described in paragraph (g)(6) of this section. In no case will the operation of this paragraph (g) cause the period of limitations on assessment to expire any earlier than the period that would have otherwise applied under this section determined without regard to this paragraph (g)(1).

(2) Limitations period if paragraph (g)(5) or (g)(6) is satisfied. If one of the disclosure provisions described in paragraphs (g)(5) or (6) of this section is satisfied, then the tax attributable to the listed transaction may be assessed at any time before the expiration of the limitations period that would have otherwise applied under this section (determined without regard to paragraph (g)(1) of this section) or the period ending one year after the date that one of the disclosure provisions described in paragraphs (g)(5) or (6) of this section was satisfied, whichever is later. If both disclosure provisions are satisfied, the one-year period will begin on the earlier of the dates on which the provisions were satisfied. Paragraph (g)(1) of this section does not apply to any period of limitations on assessment that expired before the date on which the failure to disclose the listed transaction under section 6011 occurred.

(3) Definitions--(i) Listed transaction. The term listed transaction means a transaction described in section 6707A(c)(2) of the Code and §1.6011-4(b)(2) of this chapter.

(ii) Material advisor. The term material advisor means a person described in section 6111(b)(1) of the Code and §301.6111-3(b) of this chapter.

(iii) Taxable year(s) to which the failure to disclose relates. The taxable year(s) to which the failure to disclose relates are each taxable year that the taxpayer participated (as defined under section 6011 and the regulations thereunder) in a transaction that was identified as a listed transaction and the taxpayer failed to disclose the listed transaction as required under section 6011. If the taxable year in which the taxpayer participated in the listed transaction is different from the taxable year in which the taxpayer is required to disclose the listed transaction under section 6011, the taxable year(s) to which the failure to disclose relates are each taxable year that the taxpayer participated in the transaction.

(4) Application of paragraph with respect to pass-through entities. In the case of taxpayers who are partners in partnerships, shareholders in S corporations, or beneficiaries of trusts and are required to disclose a listed transaction under section 6011 and the regulations thereunder, paragraph (g)(1) of this section will apply to a particular partner, shareholder, or beneficiary if that particular partner, shareholder, or beneficiary does not disclose within the time and in the form and manner provided by section 6011 and §1.6011-4(d) and (e), regardless of whether the partnership, S corporation, or trust or another partner, shareholder, or beneficiary discloses in accordance with section 6011 and the regulations thereunder. Similarly, because paragraph (g)(1) of this section applies on a taxpayer-by-taxpayer basis, the failure of a partnership, S corporation, or trust that has a disclosure obligation under section 6011 and that does not disclose within the time or in the form and manner provided by §1.6011-4(d) and (e) will not cause paragraph (g)(1) of this section to apply to a partner, shareholder or beneficiary of the entity. Instead, the application of paragraph (g)(1) of

this section to a partner, shareholder, or beneficiary will be determined based on whether the particular partner, shareholder, or beneficiary satisfied their disclosure obligation under section 6011 and the regulations thereunder.

(5) Taxpayer's disclosure of a listed transaction that the taxpayer did not properly disclose under section 6011--(i) In general--(A) Method of disclosure. The taxpayer must complete the most current version of Form 8886, "Reportable Transaction Disclosure Statement" (or successor form), available on the date the taxpayer attempts to satisfy this paragraph (g)(5) in accordance with §1.6011-4(d) and the instructions to the Form in effect on that date. The taxpayer must indicate on the Form 8886 that the form is being submitted for purposes of section 6501(c)(10) and the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. Disclosure under this paragraph (g)(5) will only be effective for the tax return(s) and taxable year(s) that the taxpayer specifies on the Form 8886 that he or she is attempting to disclose for purposes of section 6501(c)(10). If the Form 8886 contains a line for this purpose, then the taxpayer must complete the line in accordance with the instructions to that form. Otherwise, the taxpayer must include on the top of Page 1 of the Form 8886, and each copy of the form, the following statement: "Section 6501(c)(10) Disclosure" followed by the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. For example, if the taxpayer did not properly disclose its participation in a listed transaction the tax consequences of which were reflected on the taxpayer's Form 1040 for the 2005 taxable year, the taxpayer must include the following statement: "Section 6501(c)(10) Disclosure; 2005 Form 1040" on the form. The taxpayer must submit the properly completed Form 8886

and a cover letter, which must be completed in accordance with the requirements set forth in paragraph (g)(5)(i)(B) of this section, to the Office of Tax Shelter Analysis (OTSA). The taxpayer is permitted, but not required, to file an amended return with the Form 8886 and cover letter. Separate Forms 8886 and separate cover letters must be submitted for each listed transaction the taxpayer did not properly disclose under section 6011. If the taxpayer participated in one listed transaction over multiple years, the taxpayer may submit one Form 8886 (or successor form) and cover letter and indicate on that form all of the tax returns and taxable years for which the taxpayer is making a section 6501(c)(10) disclosure. If a taxpayer participated in more than one listed transaction, then the taxpayer must submit separate Forms 8886 (or successor form) for each listed transaction, unless the listed transactions are the same or substantially similar, in which case all the listed transactions may be reported on one Form 8886.

(B) Cover letter. (1) A cover letter to which a Form 8886 is to be attached must identify the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure and include the following statement signed under penalties of perjury by the taxpayer:

Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete.

(2) If the Form 8886 is prepared by a paid preparer, in addition to the statement under penalties of perjury signed by the taxpayer, the Form 8886 must also include the following statement signed under penalties of perjury by the paid preparer.

Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete. This declaration is based on all information of which I, as paid preparer, have any knowledge.

(C) Taxpayer under examination or Appeals consideration. A taxpayer making a disclosure under paragraph (g)(5) of this section with respect to a taxable year under examination or Appeals consideration by the IRS must satisfy the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and also submit a copy of the submission to the IRS examiner or Appeals officer examining or considering the taxable year(s) to which the disclosure under this paragraph (g) relates.

(D) Date the one-year period will begin to run if paragraph (g)(5) satisfied. Unless an earlier expiration is provided for in paragraph (g)(6) of this section, the time to assess tax under paragraph this (g) will not expire before one year after the date on which the Secretary is furnished the information from the taxpayer that satisfies all the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and, if applicable, paragraph (g)(5)(i)(C) of this section. If the taxpayer does not satisfy all of the requirements on the same date, the one-year period will begin on the date that the IRS is furnished the information that, together with prior disclosures of information, satisfies the requirements of this paragraph (g)(5). For purposes of this paragraph (g)(5), the information is deemed furnished on the date the IRS receives the information.

(ii) Exception for returns other than annual returns. The IRS may prescribe alternative procedures to satisfy the requirements of this paragraph (g)(5) in a revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin for circumstances involving returns other than annual returns.

(6) Material advisor's disclosure of a listed transaction not properly disclosed by a taxpayer under section 6011--(i) In general. In response to a written request of the IRS under section 6112, a material advisor with respect to a listed transaction must furnish to the IRS the information described in section 6112 and §301.6112-1(b) in the form and manner prescribed by section 6112 and §301.6112-1(e). If the information the material advisor furnishes identifies the taxpayer as a person who entered into the listed transaction, regardless of whether the material advisor provides the information before or after the taxpayer's failure to disclose the listed transaction under section 6011, then the requirements of this paragraph (g)(6) will be satisfied for that taxpayer. The requirements of this paragraph (g)(6) will be considered satisfied even if the material advisor furnishes the information required under section 6112 to the IRS after the date prescribed in section 6708 or published guidance relating to section 6708.

(ii) Paragraph (g)(6) not satisfied--(A) Information not furnished by a material advisor or a person permitted to act on behalf of the material advisor. The requirements of this paragraph (g)(6) are not satisfied for a taxpayer unless the information is furnished by—

(1) A person who is a material advisor (as defined in paragraph (g)(3)(ii) of this section) with respect to the taxpayer,

(2) A person who is providing the information pursuant to §301.6112-1(d) on behalf of a dissolved or liquidated material advisor with respect to the taxpayer, or

(3) a person who is providing the information on behalf of a material advisor with respect to the taxpayer under a designation agreement in accordance with §301.6112-1(f).

(B) No written request by IRS. The requirements of this paragraph (g)(6) are not satisfied unless the information is furnished in response to a written request made by the IRS to the material advisor under section 6112 (except as provided in §301.6112-1(d) with respect to a list furnished to OTSA within 60 days after dissolution or liquidation of a material advisor).

(C) Information furnished does not identify the taxpayer. The requirements of this paragraph (g)(6) are not satisfied for a taxpayer unless the information furnished identifies the taxpayer as a person who entered into the listed transaction.

(iii) Date the one-year period will begin if paragraph (g)(6) is satisfied. Unless an earlier expiration is provided for in paragraph (g)(5) of this section, the time to assess tax under this paragraph (g) will expire one year after the date on which the material advisor satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer. For purposes of this paragraph (g)(6), information is deemed to be furnished on the date that, in response to a request under section 6112, the IRS receives the information from a material advisor that satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer.

(7) Tax assessable under this section. If the period of limitations on assessment for a taxable year remains open under this section, the Secretary has authority to assess any tax with respect to the listed transaction in that year. This includes, but is not limited to, adjustments made to the tax consequences claimed on the return plus interest, additions to tax, additional amounts, and penalties that are related to the listed transaction or adjustments made to the tax consequences. This also includes any item to the extent the item is affected by the listed transaction even if it is unrelated to the

listed transaction. An example of an item affected by, but unrelated to, a listed transaction is the threshold for the medical expense deduction under section 213 that varies if there is a change in an individual's adjusted gross income. An example of a penalty related to the listed transaction is the penalty under section 6707A for failure to file the disclosure statement reporting the taxpayer's participation in the listed transaction. Examples of penalties related to the adjustments made to the tax consequences are the accuracy-related penalties under sections 6662 and 6662A.

(8) Examples. The rules of this paragraph (g) are illustrated by the following examples:

Example 1. No requirement to disclose under section 6011. P, an individual, is a partner in a partnership that entered into a transaction in 2001 that was the same as or substantially similar to the transaction identified as a listed transaction in Notice 2000-44 (2000-2 CB 255). P claimed a loss from the transaction on his Form 1040 for the tax year 2001. P filed the Form 1040 prior to June 14, 2002. P did not disclose his participation in the listed transaction because P was not required to disclose the transaction under the applicable section 6011 regulations (TD 8961), which were effective for any transaction entered into before January 1, 2001 and any transaction entered into on or after January 1, 2001 that was reported on a return of the taxpayer filed on or before June 14, 2002. Although the transaction was a listed transaction and P did not disclose the transaction, P had no obligation to include on any return or statement any information with respect to a listed transaction within the meaning of section 6501(c)(10) because TD 8961 only applied to corporations, not individuals. Accordingly, section 6501(c)(10) does not apply.

Example 2. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after first year of participation and the transaction must be disclosed with the return next filed. (i) On December 30, 2003, Y, a corporation, enters into a transaction that at the time is not a reportable transaction. On March 15, 2004, Y timely files its 2003 Form 1120, reporting the tax consequences from the transaction. On April 1, 2004, the IRS issues Notice 2004-31 that identifies the transaction as a listed transaction. Y also reports tax consequences from the transaction on its 2004 Form 1120, which it timely filed on March 15, 2005. Y did not attach a completed Form 8886 to its 2004 Form 1120 and did not send a copy of the form to OTSA. The general three-year period of limitations on assessment for Y's 2003 and 2004 taxable years would expire on March 15, 2007, and March 17, 2008, respectively.

(ii) The period of limitations on assessment for Y's 2003 taxable year was open on the date the transaction was identified as a listed transaction. Under the applicable section 6011 regulations (TD 9108), which were effective for transactions entered into before August 3, 2007, Y should have disclosed its participation in the transaction with its next filed return, which was its 2004 Form 1120, but Y did not disclose its participation. Y's failure to disclose with the 2004 Form 1120 relates to taxable years 2003 and 2004. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2003 and 2004 taxable years with respect to the listed transaction until at least one year after the date Y satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to Y.

Example 3. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after the first year of participation and the transaction must be disclosed 90 days after the transaction became a listed transaction.

(i) In January 2015, A, a calendar year taxpayer, enters into a transaction that at the time is not a listed transaction. A reports the tax consequences from the transaction on its individual income tax return for 2015 timely filed on April 15, 2016. The time for the IRS to assess tax against A under the general three-year period of limitations for A's 2015 taxable year would expire on April 15, 2019. A only participated in the transaction in 2015. On March 7, 2017, the IRS identifies the transaction as a listed transaction. A does not file the Form 8886 with OTSA by June 5, 2017.

(ii) The period of limitations on assessment for A's 2015 taxable year was open on the date the transaction was identified as a listed transaction. Under the current section 6011 regulations (TD 9350) which are effective for transactions entered into on or after August 3, 2007, A must disclose its participation in the transaction by filing a completed Form 8886 with OTSA on or before June 5, 2017, which is 90 days after the date the transaction became a listed transaction. A did not disclose the transaction as required. A's failure to disclose relates to taxable year 2015 even though the obligation to disclose did not arise until 2017. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2015 taxable year with respect to the listed transaction until at least one year after the date A satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to A.

Example 4. Requirements of paragraph (g)(6) satisfied. Same facts as Example 3, except that on April 5, 2019, the IRS hand delivers to Advisor J, who is a material advisor, a section 6112 request related to the listed transaction. Advisor J furnishes the required list with all the information required by section 6112 and §301.6112-1, including all the information required with respect to A, to the IRS on May 8, 2019. The submission satisfies the requirements of paragraph (g)(6) even though Advisor J furnishes the information outside of the 20-business-day period provided in section 6708. Accordingly, under section 6501(c)(10), the period of limitations with respect to A's taxable year 2015 will end on May 8, 2020, one year after the IRS received the

required information, unless the period of limitations remains open under another exception. Any tax for the 2015 taxable year not attributable to the listed transaction must be assessed by April 15, 2019.

Example 5. Requirements of paragraph (g)(5) also satisfied. Same facts as Examples 3 and 4, except that on May 23, 2019, A files a properly completed Form 8886 and signed cover letter with OTSA both identifying that the section 6501(c)(10) disclosure relates to A's Form 1040 for 2015. A satisfied the requirements of paragraph (g)(5) of this section as of May 23, 2019. Because the requirements of paragraph (g)(6) were satisfied first as described in Example 4, under section 6501(c)(10) the period of limitations will end on May 8, 2020 (one year after the requirements of paragraph (g)(6) were satisfied) instead of May 23, 2020 (one year after the requirements of paragraph (g)(5) were satisfied). Any tax for the 2015 taxable year not attributable to the listed transaction must be assessed by April 15, 2019.

Example 6. Period to assess tax remains open under another exception. Same facts as Examples 3, 4, and 5, except that on April 1, 2019, A signed Form 872, consenting to extend, without restriction, its period of limitations on assessment for taxable year 2015 under section 6501(c)(4) until July 15, 2020. In that case, although under section 6501(c)(10) the period of limitations would otherwise expire on May 8, 2020, the IRS may assess tax with respect to the listed transaction (as well as any other item on the return covered by the Form 872 extension) at any time up to and including July 15, 2020, pursuant to section 6501(c)(4). Section 6501(c)(10) operates to extend the assessment period but not to shorten any other applicable assessment period.

Example 7. Requirements of (g)(5) not satisfied. In 2015, X, a corporation, enters into a listed transaction. On March 15, 2016, X timely files its 2015 Form 1120, reporting the tax consequences from the transaction. X does not disclose the transaction as required under section 6011 when it files its 2015 return. The failure to disclose relates to taxable year 2015. On February 13, 2017, X completes and files a Form 8886 with respect to the listed transaction with OTSA but does not submit a cover letter, as required. The requirements of paragraph (g)(5) of this section have not been satisfied. Therefore, the time to assess tax against X with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

Example 8. Section 6501(c)(10) applies to keep one partner's period of limitations on assessment open. T and S are partners in a partnership, TS, that enters into a listed transaction in 2015. T and S each receive a Schedule K-1 from TS on April 11, 2016. On April 15, 2016, TS, T and S each file their 2015 returns. Under the applicable section 6011 regulations, TS, T, and S each are required to disclose the transaction. TS attaches a completed Form 8886 to its 2015 Form 1065 and sends a copy of Form 8886 to OTSA. Neither T nor S files a disclosure statement with their respective returns nor sends a copy to OTSA on April 15, 2016. On May 17, 2016, T timely files a completed Form 8886 with OTSA pursuant to §1.6011-4(e)(1). T's disclosure is timely because T received the Schedule K-1 within 10 calendar days before the due date of the return and, thus, T had 60 calendar days to file Form 8886

with OTSA. TS and T properly disclosed the transaction in accordance with the applicable regulations under section 6011, but S did not. S's failure to disclose relates to taxable year 2015. The time to assess tax with respect to the transaction against S for 2015 remains open under section 6501(c)(10) even though TS and T disclosed the transaction.

Example 9. Section 6501(c)(10) satisfied before expiration of three-year period of limitations under section 6501(a). Same facts as Example 8, except that on August 26, 2016, S satisfies the requirements of paragraph (g)(5) of this section. No material advisor satisfied the requirements of paragraph (g)(6) of this section with respect to S on a date earlier than August 26, 2016. Under section 6501(c)(10), the period of time in which the IRS may assess tax against S with respect to the listed transaction would expire no earlier than August 26, 2017, one year after the date S satisfied the requirements of paragraph (g)(5). As the general three-year period of limitations on assessment under section 6501(a) does not expire until April 15, 2019, the IRS will have until that date to assess any tax with respect to the listed transaction.

Example 10. No section 6112 request. B, a calendar year taxpayer, entered into a listed transaction in 2015. B did not comply with the applicable disclosure requirements under section 6011 for taxable year 2015; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after B satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to B. In June 2016, the IRS conducts a section 6700 investigation of Advisor K, who is a material advisor to B with respect to the listed transaction. During the course of the investigation, the IRS obtains the name, address, and TIN of all of Advisor K's clients who engaged in the transaction, including B. The information provided does not satisfy the requirements of paragraph (g)(6) with respect to B because the information was not provided pursuant to a section 6112 request. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

Example 11. Section 6112 request but the requirements of paragraph (g)(6) are not satisfied with respect to B. Same facts as Example 10, except that on January 9, 2017, the IRS sends by certified mail a section 6112 request to Advisor L, who is another material advisor to B with respect to the listed transaction. Advisor L furnishes some of the information required under section 6112 and §301.6112-1 to the IRS for inspection on January 17, 2017. The list includes information with respect to many clients of Advisor L, but it does not include any information with respect to B. The submission does not satisfy the requirements of paragraph (g)(6) of this section with respect to B. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

Example 12. Section 6112 submission made before taxpayer failed to disclose a listed transaction. Advisor M, who is a material advisor, advises C, an individual, in 2015 with respect to a transaction that is not a reportable transaction at that time. C

files its return claiming the tax consequences of the transaction on April 15, 2016. The time for the IRS to assess tax against C under the general three-year period of limitations for C's 2015 taxable year would expire on April 15, 2019. The IRS identifies the transaction as a listed transaction on November 3, 2017. On December 7, 2017, the IRS hand delivers to Advisor M a section 6112 request related to the transaction. Advisor M furnishes the information to the IRS on December 29, 2017. The information contains all the required information with respect to Advisor M's clients, including C. C does not disclose the transaction on or before February 1, 2018, as required under section 6011 and the regulations under section 6011. Advisor M's submission under section 6112 satisfies the requirements of paragraph (g)(6) of this section even though it occurred prior to C's failure to disclose the listed transaction. Thus, under section 6501(c)(10), the period of limitations to assess tax against C with respect to the listed transaction will end on December 29, 2018 (one year after the requirements of paragraph (g)(6) of this section were satisfied), unless the period of limitations remains open under another exception.

Example 13. Transaction removed from the category of listed transactions after taxpayer failed to disclose. D, a calendar year taxpayer, entered into a listed transaction in 2015. D did not comply with the applicable disclosure requirements under section 6011 for taxable year 2015; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after D satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to D. In 2017, the IRS removes the transaction from the category of listed transactions because of a change in law. Section 6501(c)(10) continues to apply to keep the period of limitations on assessment open for D's taxable year 2015.

Example 14. Taxes assessed with respect to the listed transaction. (i) F, an individual, enters into a listed transaction in 2015. F files its 2015 Form 1040 on April 15, 2016, but does not disclose his participation in the listed transaction in accordance with section 6011 and the regulations under section 6011. F's failure to disclose relates to taxable year 2015. Thus, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the listed transaction for taxable year 2015 until at least one year after the date F satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to F.

(ii) On July 2, 2020, the IRS completes an examination of F's 2015 taxable year and disallows the tax consequences claimed as a result of the listed transaction. The disallowance of a loss increased F's adjusted gross income. Due to the increase of F's adjusted gross income, certain credits, such as the child tax credit, and exemption deductions were disallowed or reduced because of limitations based on adjusted gross income. In addition, F now is liable for the alternative minimum tax. The examination also uncovered that F claimed two deductions on Schedule C to which F was not entitled. Under section 6501(c)(10), the IRS can timely issue a statutory notice of deficiency (and assess in due course) against F for the deficiency resulting from (1)

disallowing the loss, (2) disallowing the credits and exemptions to which F was not entitled based on F's increased adjusted gross income, and (3) being liable for the alternative minimum tax. In addition, the IRS can assess any interest and applicable penalties related to those adjustments, such as the accuracy-related penalty under sections 6662 and 6662A and the penalty under section 6707A for F's failure to disclose the transaction as required under section 6011 and the regulations under section 6011. The IRS cannot, however, pursuant to section 6501(c)(10), assess the increase in tax that would result from disallowing the two deductions on F's Schedule C because those deductions are not related to, or affected by, the adjustments concerning the listed transaction.

(9) Effective/applicability date. The rules of this paragraph (g) apply to taxable years with respect to which the period of limitations on assessment under section 6501 (including subsection (c)(10)) did not expire before **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

John Dalrymple

Deputy Commissioner for Services and Enforcement

Approved: March 10, 2015

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